

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-251

June 6, 2000

BANGOR HYDRO-ELECTRIC COMPANY
& BANGOR GAS COMPANY, LLC,
Joint Petition for Approval of Reorganization
In Connection with the Sale of Penobscot
Natural Gas Company, Inc. (§ 707, 708)

ORDER

I. SUMMARY

We approve the sale by Bangor Hydro-Electric Company (BHE) of its stock in Penobscot Natural Gas Company, Inc. (Penobscot) to its affiliate, Sempra Energy (Sempra). We also require Bangor Gas Company, LLC (Bangor Gas)¹ and BHE to report on the timing, nature, and extent of any discussions or negotiations in which they engaged prior to this sale on the subject of possible future use of BHE property or services. We reserve for a later proceeding the question of how or whether this transaction should be recorded on Bangor Gas's books.

II. PROCEDURAL HISTORY

On March 16, 2000, BHE and Bangor Gas filed a joint petition for approval of the proposed sale of BHE's stock in Penobscot to its affiliate Sempra. Penobscot is a wholly owned subsidiary of BHE and is co-owner, with Sempra, of Bangor Gas. See *Bangor Hydro Electric Company, Petition for Affiliated Interest and Reorganization Approval Needed in Connection with Bangor Gas Company Transaction*, Docket No. 97-796, Order (PUC Mar. 26, 1998.) The petitioners requested expeditious approval of this transaction, within the initial statutory 60-day period if possible, to allow Sempra to assume sole managerial responsibility for Bangor Gas as early as possible in the spring 2000 construction season.

The filing contained a copy of the Stock Purchase Agreement with the purchase price redacted and a request for a protective order to afford the price of this sale confidential treatment. On April 10, 2000, the Hearing Examiner issued Temporary Protective Order No. 1 – Confidential Business Information, limiting access to the sale price to the Commission and its Staff, OPA, and the petitioners.

The Hearing Examiner issued a Notice of Proceeding on April 12, 2000 and scheduled a preliminary hearing for April 27, 2000. The notice was sent to the service lists of proceedings involving related matters or that included potentially interested persons: Docket Nos. 97-596, 97-796, and 99-739.

¹Bangor Gas is jointly owned by Bangor Pacific, a wholly-owned subsidiary of Sempra and Penobscot Natural Gas, a wholly-owned subsidiary of BHE.

The petitioners' initial filing did not contain testimony in explanation or support of the proposed sale. Accordingly, the Hearing Examiner required the petitioners to make a supplemental filing including testimony, documentation for the price of the asset, and other information as required by Chapter 820 §§ 4 and 7 of the Commission's rules no later than April 24, 2000.

On April 24, 2000, BHE filed a Motion for Relief from Procedural Order with an accompanying Affidavit of Carroll R. Lee, Senior Vice President and Chief Operating Officer of BHE. BHE argued that the proposed transaction, consisting of a stock sale between Sempra and BHE, was not an affiliated transaction as defined by statute and that "the asset being transferred is not a 'utility asset' within the meaning of Section 4(B) of Chapter 820." Bangor Gas filed comments concurring with BHE's contention that the transaction did not involve affiliated entities.

On April 27, 2000, at the scheduled preliminary hearing in this case, the Hearing Examiner orally ruled on BHE's motion. The Hearing Examiner noted that the statute on whether affiliates of a public utility are themselves affiliates is unclear. Furthermore, the Examiner observed that fair market pricing concerns addressed by Chapter 820 were not likely to predominate in this transaction given that the Commission had previously ordered that BHE's investment in Bangor Gas was explicitly to be undertaken at the risk of shareholders, not ratepayers. See *Bangor Hydro-Electric Company, Petition for Affiliated Interest and Reorganization Approval Needed in Connection with Bangor Gas Company Transaction*, Docket No. 96-796, Order Rejecting Stipulation and Approving Second Revised Stipulation (Me. PUC Mar. 26, 1998). Accordingly, the Hearing Examiner relieved the petitioners of the market price filing requirements of Chapter 820.

At the preliminary hearing, the Hearing Examiner granted intervenor status to the Office of the Public Advocate (OPA) and, on a consolidated basis, the Industrial Energy Consumers Group (IECG), Fort James Corporation, and Champion International. After hearing objection by Bangor Gas, the Examiner also allowed its competitor, Maine Natural Gas, LLC (MNG), limited intervention on public policy issues only.

MNG noted that a petition for Section 708 approval also requires prefiled supporting testimony to allow the Commission and the parties to conduct a meaningful review of the proposed transaction. The petitioners never provided any such testimony beyond the limited information contained in Carroll Lee's Affidavit. To meet the petitioners request for greatly expedited treatment, the Hearing Examiner allowed BHE and Bangor Gas to provide supporting information through oral testimony in the form of responses to questions at technical conferences and written data responses.

The parties and the Staff also conducted discovery on BHE and Bangor Gas witnesses, including Carroll Lee and Doug Morrell of BHE and Roger Schweke of Bangor Gas (by telephone), at the April 27, 2000 preliminary hearing. Further discovery of Messrs. Morrell and Peter Dawes, accountant for BHE, and Messrs. Roger Schweke of Bangor Gas and Ray Sumida, accountant for Sempra, was conducted at a technical conference held at the Commission on May 10, 2000. Both the preliminary hearing and the May 10th technical conference were recorded for admission to the record in this proceeding without objection of any party.

By procedural order issued April 28, 2000, the Hearing Examiner granted BHE's request that the Commission grant Temporary Protective Order No. 2 for information pertaining to BHE's process, strategies, and discussions with potential buyers involved in undertaking the sale of its direct and indirect share in Penobscot. Access to this information is restricted to the Commission and its Staff, OPA, and BHE.

On May 1, 2000, the Commission received Bangor Gas's proposal that this case be bifurcated to allow approval of the reorganization by the petitioners' proposed date of May 15th, reserving for further consideration questions about how this transaction would impact Bangor Gas's books and whether this sale would result in an acquisition premium adjustment in Bangor Gas rates. In an effort to promptly address and resolve all issues raised by this filing, the Hearing Examiner denied Bangor Gas's bifurcation proposal and required that details of proposed accounting entries be filed by May 8, 2000 for further exploration at the May 10th technical conference.

On May 3, 2000, Bangor Gas filed a request for confidential treatment of information about investments in or operations of Bangor Gas or its affiliate, Penobscot, arguing that release of this information to competitors could result in competitive harm to Bangor Gas. The Hearing Examiner granted this protection by issuing Temporary Protective Order No. 3 on May 4, 2000, pending a decision by the Commission on whether annual report and other information regarding local distribution companies requires confidential treatment.

At the technical conference on May 10th, the parties discussed with the Advisory Staff a possible resolution of this matter, including stipulation terms that the Staff would support.

On May 11, 2000, Bangor Gas filed a stipulation executed by OPA, BHE and Bangor Gas, intended to resolve the issues in this case. The Stipulation recommended that the Commission approve the reorganization but reserve the question of how the transaction would be recorded on Bangor Gas's books. The parties waived their right to an Examiner's Report to allow the Staff to discuss the case with the Commissioners prior to deliberations. The remaining non-signatory parties to the case -- IECG, Champion International and Fort James Company -- indicated to the Hearing Examiner by telephone on May 12, 2000 that they neither supported nor opposed the stipulation.

The record contains all filings, transcripts and data responses filed in this proceeding.

The Commission considered the stipulation at its deliberative session on May 15, 2000.

III. LEGAL STANDARDS

This transaction requires Commission approval pursuant to 35-A M.R.S.A. § 708 as a reorganization. In effect, it is a reorganization as defined by statute for both BHE and Bangor Gas. Thus, we must review the transaction from the perspective of each utility. The Commission must determine that the reorganization is consistent with the interests of both utilities' ratepayers and investors. 35-A M.R.S.A. § 708. In addition, to the extent

this transaction constitutes an arrangement between affiliates requiring approval pursuant to 35-A M.R.S.A. § 707, it requires that the Commission find that the proposed arrangement is not adverse to the public interest. 35-A M.R.S.A. § 707(3).

When reviewing stipulations, we must independently determine whether a transaction is consistent with the public interest, reasonable, and not contrary to legislative mandate. We must also conclude that the parties joining the stipulation represent a sufficiently broad spectrum of interests to assure the Commission that there is no appearance of disenfranchisement. See *Central Maine Power Company, Proposed Increase in Rates, Docket No. 92-345(II)*, Detailed Opinion and Subsidiary Findings (Jan. 10, 1995) and *Northern Utilities, Inc., Proposed Environmental Response Cost Recovery, Docket No. 96-678*, Order Approving Stipulation (April 28, 1997.) Accordingly, we will consider the record evidence to determine whether it supports the resolution proposed by the stipulating parties and otherwise meets the statutory standards.

IV. STIPULATION PROVISIONS

The stipulation filed by the petitioners on May 11th recommends approval of the reorganization as proposed, approval as an affiliated transaction to extent it is required, and deferral of consideration of the “acquisition premium” accounting issue. To facilitate approval of the reorganization by May 15, 2000, it also waives any right of the parties to an Examiner’s Report.²

V. ANALYSIS AND DECISION

Three main issues were raised by this proposed transaction, identified by the Staff and the parties, as follows: 1) whether the proposed reorganization is consistent with the interests of shareholders and ratepayers of both BHE and Bangor Gas; 2) whether the reorganization creates any concerns about service quality or changes in local control for Bangor Gas customers; and 3) what the financial impact of the reorganization will be on BHE and Bangor Gas, including whether an acquisition adjustment will appear on Bangor Gas’s books that could impact rates.

The Staff and parties to this proceeding explored these issues in two testimonial technical conferences and in written discovery conducted over a period of approximately three weeks.

A. Review of Record Testimony and Argument

1. Impact on Local Control and Management of Bangor Gas

BHE and Bangor Gas witnesses testified that the only influence BHE exerts with respect to Bangor Gas is through two members of its Board of Directors (Morrell and Lee) and the use by Bangor Gas of BHE’s accounting staff pursuant to an approved support services agreement. They further testified that the

²The parties subsequently clarified that Staff was free to discuss this matter with the Commission at any time, despite the wording of paragraph C (3) of the stipulation.

operation and management of Bangor Gas, as currently planned, will remain unchanged as a result of this transaction. In effect, the witnesses testified that Sempra has largely controlled this project to date and will continue to do so. Because there are no significant changes in the management of Bangor Gas or its structure of local control, the petitioners urge us to find that the proposed reorganization is in the interests of Bangor Gas's ratepayers.

In addition, counsel for BHE and Bangor Gas noted that the original agreement between BHE and Sempra for formation of Bangor Gas, approved in Docket No. 97-796, contemplated the possibility that one or the other of the entities might not invest to the maximum allowed. The degree of investment by each partner in the joint venture was intended to translate to the percentage of each entity's ownership and control. Accordingly, they argue that, in effect, because BHE was free to opt out of investment decisions at any point, the Commission has already considered and approved the possibility that Sempra could become the full owner of Bangor Gas. Furthermore, since Sempra's full ownership of Bangor Gas was one possible outcome of the investment arrangement reviewed in Docket No. 97-796, this reorganization does not alter Bangor Gas's technical or financial capability or its service plans.

We agree with the petitioners' contentions and find that this transaction would not create significant or adverse changes in the management of Bangor Gas or the degree of local control. Accordingly, in this regard, the transaction is consistent with the interests of Bangor Gas's ratepayers.³

2. Interests of BHE shareholders

BHE states that it decided to sell its interest in Bangor Gas shortly after it obtained authority to make the investment because it realized that its efforts would be better spent on its core responsibilities, particularly adjusting to a restructured electric industry, and other non-core ventures to which it was better suited. BHE currently maintains investments in telecommunications systems and security alarm systems.

Furthermore, BHE contends that its Board of Directors decided to sell its interest in Bangor Gas because, based on financial analyses, it judged that it would be more beneficial for BHE and its shareholders than would retaining ownership. BHE provided its analyses under protective order to allow Staff and OPA to review them.

The sale of this investment appears to be within management discretion. It also appears that the proposed transaction should not have any significant short-term effect on BHE's financial condition and may have a beneficial long-term effect, if BHE's projections are accurate.

³We do not mean to imply that "local control" to any degree is a necessary characteristic of any Maine public utility.

3. Interests of BHE ratepayers

The petitioners noted that Commission approval of BHE's investment in Bangor Gas was explicitly subject to the condition that shareholders, not ratepayers, assume all future investment risks. Accordingly, all cumulative investments to date have been made "below the line" and do not impact electric rates.

Beyond that, we need only determine whether BHE's sale price to Sempra is comparable to the amount invested by BHE in this venture to ascertain that this transaction will not financially destabilize the electric utility, resulting in a need for rate support. Because the financial impact of this transaction is relatively small, it will not significantly impact BHE's ratepayers.

4. Impact on Bangor Gas ratepayers

Under the stipulation, we would reserve for later determination the question of how the acquisition price and BHE and Sempra's development costs will be booked to Bangor Gas.

Sempra proposes to capitalize "start-up" expenses by writing up its investment in Bangor Gas by the difference between its current net equity investment in Penobscot and its purchase price of Penobscot stock. This would increase Bangor Gas's rate base, thereby potentially increasing rates set after the current rate plan ends, as well as raising the threshold for profit sharing allocation to ratepayers in the meantime. These "start up" costs are not currently reflected on Bangor Gas's books, and to date have been expensed by Sempra and BHE. Bangor Gas was unable to point to other instances in which this has been allowed, and could not confirm to Advisory Staff's satisfaction during the abbreviated time it had to review this issue, that this approach is consistent with accounting and auditing standards.

In light of these concerns, the parties' agreement that no accounting entries relating to the acquisition will be made until further Commission determination is reasonable.⁴ Given the impact that these entries could have on rates, we agree that the question of how this transaction should ultimately appear on Bangor Gas's books should be deferred for another proceeding in which it can be thoroughly reviewed.

5. Other matters

a. BHE Compliance

Staff requested an accounting of the total BHE investment in Bangor Gas, broken down into capital investment and development costs, by date. Staff intends to review whether or not BHE invested more in Bangor Gas than

⁴ We note that Staff actively participated with the parties in crafting paragraph B(3), entitled "Acquisition Premium Issue", with the concurrence of the stipulating parties.

authorized. While violation of our orders is a matter of general concern in our role as BHE's regulatory authority, we do not view a violation of this kind to justify delaying this transaction, we will separately consider what, if any, action to take concerning the level of investment.

b. Future Transactions Between BHE and Bangor Gas

Although not an issue raised by the parties, we do see at least the potential for future ratepayer harm if, at the same time that negotiations concerning the sale of the stock were being conducted, there were also discussions about the future purchase or use by Bangor Gas of BHE property, especially its rights of way. In this situation, there could be a conflict between the interests of BHE's shareholders and ratepayers since shareholders would clearly benefit from a higher price for the stock while ratepayers might benefit from a higher price for the sale or use of property. To be clear, we are not aware of any discussions of this nature, but we believe it prudent to include in our order a requirement that BHE and Bangor Gas advise us if they have occurred.

c. Expedited Review

Our Staff met the petitioners' request for an extremely expeditious processing of this reorganization because of the utilities' claims that it is very important to do so in the interest of ensuring that regulation does not hold up certain business dealings and fast-approaching utility service delivery dates.⁵ Bangor Gas contends that it must sever its corporate affiliation with BHE as soon as possible so that it can proceed with necessary construction and project development. It also argues that it needs this severance to proceed to discuss use of BHE property without an affiliate relationship. We note Staff's legitimate concerns about the problems that can result from expedited treatment, particularly given the frequency with which such treatment is sought. We remind utilities that our process is intended to allow a reasonable and open review. Utilities and other parties should not presume that the Commission will always have the resources available to process complex matters within the time sought by petitioners. The Commission will accommodate requests for quick proceedings to the extent we can; we will not, however, sacrifice due process or our need to ensure that our decisions are consistent with the public interest.

VI. CONCLUSION

We find this transaction consistent with the interests of shareholders and ratepayers and approve the stipulation provisions that appear in sections B and C, pages 4-6 of the document.⁶

⁵ While our Order did not issue on May 15, 2000, the matter was deliberated and approved on that date.

⁶We do not need to adopt, nor do we necessarily agree with, the characterizations on pages 2 and 3 of the stipulation.

Accordingly, we

O R D E R

1. That Bangor Hydro-Electric Company's proposed sale of the stock of its subsidiary, Penobscot Natural Gas Company, Inc., is approved subject to the condition that no accounting adjustments related to this transaction may be made on Bangor Gas Company, LLC's books until and unless we authorize those entries;

2. That Bangor Hydro-Electric Company and Bangor Gas Company, LLC, shall notify us of the date of the closing of this transaction within 30 days of closing; and

3. Bangor Gas Company LLC and Bangor Hydro-Electric Company shall file a report by June 20, 2000 on the timing, nature, and extent of any discussions or negotiations in which they engaged prior to this sale on the subject of possible future use of BHE property or services.

Dated at Augusta, Maine, this 6th day of June, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.